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FEDERAL QUARANTINE LAWS

AMONG the contributions which America has made to the science of jurisprudence is the idea of a dual or federal organization of government, in which both the general and the local governments act directly on the individual. It has embodied this idea in an actual system, and, though the workings of this system have not always been above criticism, it has in many ways served a useful purpose. Had the theory of the indivisibility of sovereignty possessed supreme sway, it is practically certain that no general government of substantial powers could have been created; for in the then prevalent confusion of sovereignty with government, such a government would have seemed sovereign, and so great was the prejudice against sovereignty at a distance that the people would not have consented to the creation of a governmental system in which the states themselves could not be regarded as sharers. They believed, and believed thoroughly, in government "close home." And hence, in what they conceived to be their most vital interests, they insisted that the major portion of political power be left to the local governments.

It is therefore not surprising that, at the beginning, the states should have believed and acted upon the belief that the protection of public health was entrusted to them; that whatever quarantine laws there might be must be state laws. The steps in the movement away from this position constitute a very interesting chapter in the evolution of our ideas of constitutional interpretation. They mark a slowly changing conception of the relative importance which should be attached to theory as compared with expediency in determining the spheres of federal and state activity. Theoretical notions have gradually been forced to give way before the logic of facts.

The development of federal control over quarantine has been very gradual. Briefly stated, the stages in the process have been as follows: (1) exclusive state control; (2) moral support by

the federal government; (3) appropriations from the national treasury in aid of state quarantine regulations; (4) a federal system of quarantine as applied to foreign commerce; (5) extension of the federal quarantine system to include interstate commerce.

Until 1796 there was no federal quarantine law. Whatever legislation there was upon the subject proceeded from the states. An epidemic of yellow fever in that year proved that the quarantine regulations provided by the states were grossly inadequate. The realization of this fact created an appreciable sentiment in favor of a national system. In response to this sentiment, a bill was introduced giving the president power to declare and enforce quarantine regulations of foreign commerce. This measure was opposed upon two grounds: (1) that it conferred upon the president powers of legislation; (2) that it interfered with the police power of the states. The first of these objections has good ground upon which to rest; the second has not. The Supreme Court of the United States has since had an opportunity to rule upon this very question. In the case of *Morgan's Railroad and Steamship Company v. Louisiana*,¹ the court said:

Whenever Congress shall undertake to provide for the commercial cities of the United States a general system of quarantine, or shall confide the details of such a system to a national board of health, or to local boards, as may be found expedient, all state laws upon the subject will be abrogated, at least so far as the two are inconsistent.

That the police power of the states may not stand in the way of federal regulation of interstate or foreign commerce has been decided in the case of *Gibbons v. Ogden*² and in that of *Henderson v. The Mayor*.³ In 1796, however, these arguments aroused sufficient prejudice against the measure to bring about its defeat by a vote of 46 to 23. It was, however, passed in an emasculated form. As passed, it simply gave the president power to proffer assistance to the states in enforcing their quarantine laws, if they had any, but it made no appropriation

¹ 118 U. S. 455.

² 9 Wheaton, 210.

³ 92 U. S. 272.

to enable the president to render assistance, in case he should see fit to offer it and some state should condescend to accept the offer. This sham provision was, very properly, short-lived.

In 1799 the above law was repealed, and a far more effective measure was put in its stead. This statute, which is still a part of our quarantine laws, provides that the customs officers and the masters and crews of revenue cutters shall conform to the quarantine and health laws of any state and shall aid in their execution as directed by the secretary of the Treasury. It provides for the unlading of vessels in case the port of entry for which they are cleared is quarantined; for the erection of suitable warehouses in which the merchandise from vessels subject to quarantine may be deposited; for the removal of goods from such warehouses under direction of the secretary of the Treasury; for the removal of revenue officers from a port of entry in which there is a contagious or epidemic disease to some more convenient place within, or as near as may be to, such collection district, public notice of such removal to be given by the secretary of the Treasury or the first comptroller; for the removal, under direction of the president, of public offices from the capital, in case of the prevalence of a contagious or epidemic disease therein; and for the adjournment of the Supreme Court, under like circumstances, under direction of the chief justice. Like power is given to judges of district courts under like circumstances.¹

¹ Statutes at Large, 619. An Act respecting Quarantine and Health Laws. The text of this act is as follows:

“Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the quarantines and other restraints, which shall be required and established by the health laws of any state, or pursuant thereto, respecting any vessels arriving in, or bound to, any port or district thereof, whether from a foreign port or place, or from another district of the United States, shall be duly observed by the collectors and all other officers of the revenue of the United States, appointed and employed for the several collection districts of such state respectively, and by the masters and crews of the several revenue cutters, and by the military officers who shall command in any fort or station upon the sea-coast; and all such officers of the United States shall be, and they hereby are, authorized and required, faithfully to aid in the execution of such quarantines and health laws, according to their respective powers and precincts, and as they shall be directed from time to time by the Secretary of the Treasury of the United States. And the said Secretary shall be, and he is hereby authorized, when a conformity to such quarantines and

This act, which aims to supplement the quarantine regulations of the states, is all the federal legislation we have on the subject down to 1866. The legislation of that year marks a substantial advance; for, in that year, Congress made the first appropriation for the purpose of aiding in the enforcement of

health laws shall require it, and in respect to vessels which shall be subject thereto, to prolong the terms limited for the entry of the same, and the report or entry of their cargoes, and to vary or dispense with any other regulations applicable to such reports or entries: *Provided*, that nothing herein shall enable any state to collect a duty of tonnage or impost without the consent of the Congress of the United States thereto: *And provided*, that no part of the cargo of any vessel shall, in any case, be taken out or unladen therefrom, otherwise than as by law is allowed, or according to the regulations hereinafter established.

"Section 2. *And be it further enacted*, That when, by the health laws of any state, or by the regulations which shall be made pursuant thereto, any vessel arriving within a collection district of such state, shall be prohibited from coming to the port of entry or delivery by law established for such district, and it shall be required or permitted by such health laws, that the cargo of such vessel shall or may be unladen at some other place within or near to such district, the collector authorized therein, after due report to him of the whole of such cargo, may grant his especial warrant or permit for the unloading and discharge thereof, under the care of the surveyor, or of one or more inspectors, at some other place where such health laws shall permit, and upon the conditions and restrictions which shall be directed by the Secretary of the Treasury, or which such collector may, for the time, reasonably judge expedient for the security of the public revenue: *Provided*, that in every such case, all the articles of the cargo so to be unladen, shall be deposited at the risk of the parties concerned therein, in such public or other warehouses or inclosures, as the collector shall designate, there to remain under the joint custody of such collector and of the owner or owners, or master, or other person having charge of such vessel, until the same shall be entirely unladen or discharged; and until the goods, wares or merchandise which shall be so deposited may be safely removed, without contravening such health laws; and when such removal may be allowed, the collector having charge of such goods, wares or merchandise, may grant permits to the respective owners or consignees, their factors or agents, to receive all goods, wares or merchandise, which shall be entered, and whereof the duties accruing shall be paid or secured, according to law, upon the payment by them of a reasonable rate of storage; which shall be fixed by the Secretary of the Treasury for all public warehouses and enclosures.

"Section 3. *And be it further enacted*, That there shall be purchased or erected, under the orders of the President of the United States, suitable warehouses, with wharves and inclosures, where goods and merchandise may be unladen and deposited, from any vessel which shall be subject to a quarantine, or other restraint, pursuant to the health laws of any state as aforesaid, at such convenient place or places therein, as the safety of the public revenue, and the observance of such health laws may require.

"Section 4. *And be it further enacted*, That when, by the prevalence of any contagious or epidemical disease, in or near the place by law established, as the port of

quarantine laws. On May 26, 1866, the Senate and House passed the following joint resolution respecting quarantine and health laws:

Be it resolved by the Senate and House of Representatives in Congress assembled, That the Secretary of the Treasury be, and he hereby

entry for any collection district, it shall become dangerous or inconvenient for the collector and the other officers of the revenue employed therein, to continue the discharge of their respective offices at such port, the Secretary, or in his absence, the comptroller of the treasury of the United States, may direct and authorize the removal of the collector, and the other officers employed in his department, from such port, to any other more convenient place, within, or as near as may be to such collection district, where such collector and officers may exercise the same authorities, and shall be liable to the same duties, according to existing circumstances, as in such lawful port or district; and of such removal, public notice shall be given as soon as may be.

"Section 5. *And be it further enacted*, That it shall be lawful for the judge of any district court of the United States, within whose district any contagious or epidemical disease shall at any time prevail, so as in his opinion to endanger the life or lives of any person or persons confined in the prison of such district, . . . to cause the person or persons confined as aforesaid, to be removed to the next adjacent prison where such disease does not prevail, there to be confined, until he, she or they may safely be removed back to the place of their first confinement; which removals shall be at the expense of the United States.

"Section 6. *And be it further enacted*, That in case of the prevalence of a contagious or epidemical disease at the seat of government, it shall be lawful for the President of the United States to permit and direct the removal of any or all the public offices to such other place or places as, in his discretion, shall be deemed most safe and convenient for conducting the public business.

"Section 7. *And be it further enacted*, That whenever, in the opinion of the chief justice, or in case of his death, or inability, of the senior associate justice of the supreme court of the United States, a contagious sickness shall render it hazardous to hold the next stated session of the said court at the seat of government, it shall be lawful for the chief or such associate justice, to issue his order to the marshal of the district within which the supreme court is by law to be holden, directing him to adjourn the said session of the said court to such other place within the same, or an adjoining district, as he may deem convenient; and the said marshal shall thereupon adjourn the said court, by making publication thereof in one or more public papers printed at the place by law appointed for holding the same, from the time he shall receive such order, until the time by law prescribed for commencing the said session. And the district judges shall, respectively, under the same circumstances, have the same power, by the same means, to direct adjournments of the district and circuit courts within their several districts, to some convenient place within the same respectively.

"Section 8. *And be it further enacted*, That the act, intituled 'An act relative to quarantine', passed in the first session of the fourth Congress of the United States, shall be, and the same is hereby repealed.

"Approved, February 25, 1799."

is, authorized to make and carry into effect such orders and regulations of quarantine as, in his opinion, may be deemed necessary and proper, in aid of State or municipal authorities, to guard against the introduction of cholera into the United States; and the Secretary of the Treasury is further authorized to direct the revenue officers and officers commanding revenue cutters to aid in the execution of such quarantine, and also in the execution of the health laws of the States respectively in such manner as may to him seem necessary. And such an amount of money as may be necessary to carry into effect this joint resolution is hereby appropriated out of any money in the treasury not otherwise appropriated; provided the authority hereby granted shall expire on the first Monday of January, anno Domini eighteen hundred and sixty-seven.¹

The work to be done was, however, still strictly supplementary; for though the secretary of the Treasury was authorized to coöperate with the states in enforcing their quarantine laws, he had no authority to "add to, modify or supersede any state regulation." The general policy to be pursued was therefore still left entirely in the hands of the states, each of which feared to incur any very great expense lest part of its expenditure should inure to the benefit of its neighbors.

Notwithstanding the manifest advantages of control by a central power which could deal, according to its own plan, with the whole disease area, it is doubtful if the federal government would have been authorized to do anything more than use its "good offices" in aiding state regulation, had not the recurring epidemics of yellow fever in the sixties, seventies and eighties created a popular sentiment which forced Congress to do something more than "second the motion."

Even under pressure, Congress moved very cautiously. Apprehensive of overrating the strength of the demand for untrammelled federal action in the interest of the public health, it passed a joint resolution in June, 1870, making provision for the sending of an army medical officer to visit the leading cities of the Atlantic and Gulf states, to ascertain the conditions and the sentiment of the people, to report these facts for the information of Congress, and to give his judgment as to what

¹ 14 U. S. Statutes at Large, 357.

system of quarantine, if any, which would give promise of success in checking the spread of epidemics, particularly of yellow fever, could be enforced by the federal government without antagonizing the states. Dr. Harvey E. Brown was appointed to make this investigation. After studying conditions carefully at close range, he reached the conclusion that, to deal with the situation efficiently, unity of control was necessary. He therefore recommended that a national system of quarantine be substituted for the varied local systems. It may be said that this was the conclusion of a federal officer; but I think it entirely safe to say that any competent authority in his profession who was familiar with administrative methods would have reached the same conclusion.

A bill embodying the recommendations of Dr. Brown was introduced at the next session of Congress and passed the House, but was defeated in the Senate because of the opposition of the Democrats under the lead of Senator Thurman. The ground of their opposition was that a national quarantine, if made effective, would interfere with the police power of the states. In their mind the doctrine of state-rights had taken much deeper root than the wise Roman maxim: *Salus populi, suprema lex*. Nothing short of a pestilence could rid them of a notion which our national development had rendered obsolete. To speak more accurately, it took a series of pestilences to convince them that our national evolution had rendered certain modifications in their theory necessary in order to apply it successfully to existing conditions. And the pestilences came.

The epidemics of yellow fever in 1873 and 1876 so increased the numbers and strengthened the convictions of those favoring the recommendations of Dr. Brown, that, in 1878, Congress passed an act providing for something resembling a national quarantine system, which, however, was to operate only against foreign countries. In its more important sections it provided that

No vessel or vehicle coming from any foreign port or country where any contagious or infectious disease may exist, and no vessel or vehicle conveying any person or persons, merchandise or animals, affected with any infectious or contagious disease, shall enter into any port of

the United States or pass the boundary line between the United States and any foreign country, contrary to the quarantine laws of any one of said United States, into or through the jurisdiction of which said vessel or vehicle may pass, or to which it is destined, except in the manner and subject to the regulations to be prescribed as hereinafter provided.

That it shall be the duty of the medical officers of the Marine Hospital Service and of customs officers to aid in the enforcement of the national quarantine rules and regulations.

That whenever, at any port of the United States, any State or municipal quarantine system may now, or may hereafter exist, the officers or agents of said system shall, upon application of the respective State or municipal authorities, be authorized and empowered to act as officers or agents of the national quarantine system, and shall be clothed with all the powers of United States officers for quarantine purposes, but shall receive no pay or emoluments from the United States. At all other ports where, in the opinion of the Secretary of the Treasury, it shall be deemed necessary to establish quarantine, the medical officers or other agents of the Marine Hospital Service shall perform such duties in the enforcement of the quarantine rules and regulations as may be assigned them by the Surgeon-General of that service under this act: *Provided*, That there shall be no interference in any manner with any quarantine laws or regulations as they now exist or may hereafter be adopted under State laws.¹

Before this act could be put into operation, the southern states were afflicted by the worst epidemic of yellow fever in the history of this country, causing a loss of more than fifteen thousand lives and, according to Surgeon-General Walter Wyman, a pecuniary loss of not less than a hundred million dollars. Such inroads upon the well-being of our people could not fail to direct attention to the problem of finding some means of preventing or, at least, of reducing the extent of losses to be suffered by the recurrence of such epidemics in the future. In his annual message to Congress, in December, 1878, President Hayes emphasized the urgency of the situation in the following language:

The fearful spread of this pestilence has awakened a very general

¹ 20 Statutes at Large, 37.

public sentiment in favor of a national sanitary administration, which shall not only control quarantine but have the sanitary supervision of internal commerce in times of epidemics, and hold an advisory relation to the State and municipal health authorities, with power to deal with whatever endangers the public health, and which the municipal and State authorities are unable to regulate. The national quarantine act approved April 29, 1878, which passed too late in the last session of Congress to provide the means for carrying it into practical operation during the past season, is a step in the direction here indicated. In view of the necessity for the most effective measures, by quarantine and otherwise, for the protection of our seaports and the country generally from this and other epidemics, it is recommended that Congress give to the whole subject early and careful consideration.

This recommendation, coupled with the increasing demand that something be done, caused Congress again to take up the work of revising the quarantine laws in the interest of public health. By this time the alignment of forces had somewhat changed. Many of the rockribbed Democrats from the southern states had been impelled by the ravages of the yellow scourge to forget their extreme state-rights theories and were ready to place in the hands of the federal government, for the protection of the public health, far greater powers than it had hitherto exercised. To this end several bills were presented by southern senators. Indeed, the only conspicuous southern opponent of federal quarantine was Senator Morgan, who upon this question fought shoulder to shoulder with Senator Edmunds. But a majority of the Senate favored the federal as opposed to the local system, and a bill passed the Senate. This, however, was defeated in the House by a vote of 128 to 112. The opposition to the measure in the House was based upon the ground that the federal treasury ought not bear the expense of a work of which the benefit would inure mainly to one section. This furnishes one of the many evidences of the lengths to which sectionalism was at that time carried.

On February 7, 1879, Mr. Harris, on behalf of a select committee appointed to investigate the best means of preventing the introduction and spread of contagious diseases, made the following report to the Senate:

The committee has held joint sessions with a committee of the House of Representatives appointed for the same purpose, and the committees of the two houses, in joint session, appointed . . . scientific experts . . . The experts met at Memphis, Tennessee, on the 26th of December, 1878, and were there instructed by the committees to make such investigations as could be made within the time allowed, and report to the committees :

First. The origin, cause, and distinctive features of yellow fever and cholera ; whether they are indigenous to any part of the United States ; if, not, how they are brought to this country, and the localities from which they come ; and, if found to be indigenous and also imported, in what proportion and to what extent has their presence in the United States been owing to importation.

Second. The season of the year and atmospheric conditions when and in which they may be propagated.

Third. The means to be adopted by which their introduction into this country from other localities may be prevented.

Fourth. The method of preventing their propagation and spread when once introduced into the United States.

Fifth. The number of deaths that have occurred in the United States during the year 1878 ; the expenditure of money and injury to business resulting therefrom.

The experts were distributed to various places recently infected with yellow fever, to investigate and collect facts preparatory to reporting upon the questions propounded, but under orders to meet at Washington on the 15th of January, 1879, to agree upon their conclusions and make their report.

A joint sub-committee of three senators and three representatives was sent to New Orleans, and a similar sub-committee was sent to Memphis ; each of which committees took the testimony of a large number of leading medical and commercial men, which was submitted to the board of scientific experts upon their meeting on the 15th January, 1879, with such other communications from medical men and scientists as had come to the hands of the committee. The board of experts having before it also the results of the labors of what is known as the "Yellow Fever Commission," organized by the supervising surgeon of the Marine Hospital Service in 1878, and the expenses of which were paid by the munificent charity of Mrs. Elizabeth Thompson, of the city of Washington.

On the 30th of January, 1879, the board of experts submitted their report to the committees of the Senate and House of Representatives,

in joint session, which, with the evidence and communications above referred to, is herewith presented as an appendix to this report.

The board of experts say that, "according to the testimony of existing records, yellow fever has invaded the present territorial limits of the United States" in eighty-eight years between 1693 and 1878, and that the evidence of importation for seventy-seven of these eighty-eight years is more or less complete, and that every epidemic that has occurred in the United States can be traced, either with certainty or with a high degree of probability, to a new importation, and that there is no conclusive proof that the disease is indigenous to any part of the United States, or originated here in any single instance; but it is admitted that "there are facts which seem to warrant the inference that, in some of our southern cities, the specific poison of the disease, when hidden away from the cold in sheltered places, may live through a mild winter, and give rise, during the succeeding summer, to scattered cases of the fever; but the proof that such cases have at any time given rise to an epidemic is not conclusive."

From the testimony of eminent medical men, and the conclusions arrived at by the board of scientific experts, after the fullest and most careful investigation possible within the short time allowed, the committee strongly incline to the opinion that neither yellow fever nor cholera is indigenous to any part of the United States, and that the great majority, if not all the epidemics of these diseases with which the country has suffered so greatly, have resulted from importation.

The committee is of opinion that the best and only certain means of preventing the introduction of these diseases from other countries is absolute non-intercourse with ports where they exist in epidemic form during the time they so exist.

And the next best means of prevention is a well-regulated national quarantine, strict in its requirements as to the observance of all proper sanitary measures at the port of departure by all vessels sailing from infected ports, and equally strict in requirements and enforcements of all necessary inspections of such vessels, their cargoes, passengers, and crews, and the thorough disinfection of the same, when necessary, at quarantine stations before being allowed to enter any port of the United States.

While these quarantine regulations may not give absolute security against the importation of these diseases, they will, in the opinion of the committee, prevent importation to a very large extent, and secure benefits greatly in excess of any possible cost of their enforcement. The public health is second in importance to no question which ad-

dresses itself to the consideration of the legislator, and Congress should, in the opinion of the committee, within the scope of its constitutional powers, adopt such measures as are best calculated to preserve and promote it.

In the exercise of the power "to regulate commerce with foreign nations and among the States," the regulations should be such as not only to promote the commercial interests of the country, by measures suggested by those considerations which have generally heretofore controlled these regulations, but should also so regulate as to prevent, as far as possible, the importation of all contagious or infectious diseases from foreign countries and from State to State.

To this end the committee report and recommend the passage of a bill which prescribes certain duties to be observed and performed by all vessels coming from any foreign port where any contagious or infectious disease exists before departure, and inspection and, if necessary, disinfection and detention of vessel, cargo, passengers and crew before entering any port of the United States. And it also establishes a bureau of health, with a director-general of health as its chief executive officer, and a board of health composed of seven members, to be appointed by the President by and with the advice and consent of the Senate, and the Surgeon-General of the Army and the Surgeon-General of the Navy to be *ex-officio* members of said board, and that said bureau of health shall be charged with the execution of all sanitary measures within the District of Columbia which are now or may hereafter be required by law or made in pursuance thereof, and also the making, with the approval of the President, such uniform quarantine rules and regulations upon the commerce with foreign nations and between the States as may be deemed necessary and authorized by law, and the execution of the same. It is also charged with the supervision of all matters connected with the Marine Hospital service, the bill providing that the office of supervising surgeon of that service be abolished. It is also charged with the duty of obtaining information as to the sanitary condition of foreign ports.

While the bill reported by the committee does not present a complete and perfect system, or accomplish all that it is believed will be necessary and proper to be done in this respect in the future, it is, in the opinion of the committee, a step in the right direction, the beginning of a system that the calamities of the past have proved to be necessary and the benefits of the future will prove to be important.

In the opinion of the committee, Congress has no power to supersede or interfere with any quarantine regulations operating wholly

within any State, which may have been or may hereafter be adopted by any State or established by the authority of any State ; but independent of, and in addition to such quarantine regulations as the States may have adopted, or may hereafter adopt, Congress has the power so to regulate commerce as to prevent the importation of contagious or infectious diseases from foreign countries and from one State to another.

The bill reported by the committee proposes coöperation with State and municipal authorities without interfering with their respective systems, and invites the State authorities to undertake the execution of its provisions, and provides for the appointment of quarantine officers of the United States only at such places as the State authorities may refuse or fail to execute the law of the United States and the regulations made pursuant thereto.

While the committee is of opinion that the enforcement of quarantine regulations is important to prevent the introduction and spread of epidemic diseases, it is equally well satisfied of the importance of enforcing strictly the most thorough local sanitary measures in every city and town that would protect the lives and promote the health of its citizens.

While the weight of testimony greatly preponderates, and the opinions of the committee strongly incline to the conclusion, that neither cholera nor yellow fever is indigenous to any part of the United States, yet the proof of the fact that the latter, if not both, may not originate here, is not so conclusive as to justify or warrant cities, towns or communities in relaxing in the slightest degree in the observance and enforcement of all local sanitary measures necessary to and promotive of health.

On March 3, 1879, the following law was enacted :

Section 1. There shall be established a National Board of Health to consist of seven members, to be appointed by the President, by and with the advice and consent of the Senate, not more than one of whom shall be appointed from any one State, whose compensation, during the time when actually engaged in the performance of their duties under this act, shall be ten dollars per diem each and reasonable expenses, and of one medical officer of the Army, one medical officer of the Navy, one medical officer of the Marine Hospital Service, and one officer from the Department of Justice, to be detailed by the Secretaries of the several Departments and the Attorney General, respectively, and the officers so detailed shall receive no compensation. Said board shall

meet in Washington within thirty days after the passage of this act and in Washington or elsewhere from time to time upon notice from the president of the board, who is to be chosen by the members thereof, or upon its own adjournments, and shall frame all rules and regulations authorized or required by this act, and shall make or cause to be made such special examinations and investigations at any place or places within the United States, or at foreign ports, as they may deem best, to aid in the execution of this act and the promotion of its objects.

Section 2. The duties of the National Board of Health shall be to obtain information upon all matters affecting the public health, to advise the several departments of the government, the executives of the several States, and the Commissioners of the District of Columbia, on all questions submitted by them, or whenever in the opinion of the board such advice may tend to the preservation and improvement of the public health.

Section 3. The Board of Health, with the assistance of the Academy of Science, which is hereby requested and directed to coöperate with them for that purpose, shall report to Congress at its next session a full statement of its transactions, together with a plan for a national public health organization, which plan shall be prepared after consultation with the principal sanitary organizations and the sanitarians of the several States of the United States, special attention being given to the subject of quarantine, both maritime and inland, and especially as to regulations which should be established between State or local systems of quarantine and a national quarantine system.

Section 4. The sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated to pay the salaries and expenses of said board and to carry out the purposes of this act.

The same Congress succeeded in passing, on July 1, 1879, an act "to prevent the introduction of contagious and infectious diseases within the United States." This act provided

that the Board of Health shall have power, when they may deem it necessary, with the consent and approval of the Secretary of the Treasury, as a means of preventing the importation of contagious or infectious diseases into the United States, or into one State from another, to erect temporary quarantine buildings and to acquire on behalf of the United States titles to real estate for that purpose, or to rent houses, if there be any suitable, at such points and places as are named in such section.

For these purposes the Board of Health was authorized to draw on the \$500,000 appropriated by the act of June 2, 1879.

We find in this act the first move in the direction of an interstate quarantine law. Not only did it provide for federal initiative in interstate quarantine, but it furnished an inducement for the states to bring their laws into harmony with the federal law in order that they might avail themselves of the federal appropriations. A further move was made in this direction in 1888, when Congress made an appropriation of \$486,500 for the construction, equipment and maintenance of quarantine stations at Delaware Breakwater, Cape Charles, Sapelo Sound, Key West, Gulf Station, San Diego and San Francisco.¹ The following year the president was

authorized, in case of threatened or actual epidemic of cholera or yellow fever, to use the unexpended balance of the sum appropriated by the joint resolutions approved September 26 and October 12, 1888, and one hundred thousand dollars in addition thereto, or so much thereof as may be necessary, in the aid of State or local boards or otherwise, in his discretion, in preventing and suppressing the spread of the same.²

Further supplementary appropriations were made in 1890.

In 1893 the most elaborate act which has yet been passed on the subject of federal quarantine became a law. Vessels clearing for American ports were required to secure a bill of health from the consul or consular medical officer at the port from which they cleared. Violations of this requirement were to be punished by a fine not exceeding five thousand dollars. The law provided further

that the Supervising Surgeon-General of the Marine Hospital Service shall, immediately after this act takes effect, examine the quarantine regulations of all State and municipal boards of health, and shall, under the direction of the Secretary of the Treasury, coöperate with and aid State and municipal boards of health in the execution and enforcement of the rules and regulations of such boards and in the execution and enforcement of the rules and regulations made by the Secretary of the

¹ 25 Statutes at Large, 356.

² *Ibid.*, p. 954.

Treasury to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, and into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia ; and all rules and regulations made by the Secretary of the Treasury shall operate uniformly and in no manner discriminate against any port or place ; and at such ports and places within the United States as have no quarantine regulations under State or municipal authority, where such regulations are, in the opinion of the Secretary of the Treasury, necessary to prevent the introduction of contagious or infectious diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and at such ports and places within the United States where quarantine regulations exist under the authority of the State or municipality which, in the opinion of the Secretary of the Treasury, are not sufficient to prevent the introduction of such diseases into the United States, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, the Secretary of the Treasury shall, if in his judgment it is necessary and proper, make such additional rules and regulations as are necessary to prevent the introduction of such diseases into the United States from foreign countries, or into one State or Territory or the District of Columbia from another State or Territory or the District of Columbia, and when said rules and regulations have been made they shall be promulgated by the Secretary of the Treasury and enforced by the sanitary authorities of the States and municipalities, where the State or municipal health authorities will undertake to execute and enforce them ; but if the State or municipal authorities shall fail or refuse to enforce said rules and regulations the President shall execute and enforce the same and adopt such measures as in his judgment shall be necessary to prevent the introduction and spread of such diseases, and may detail or appoint officers for that purpose.¹

Though imperfect in many respects, this law is an advance in the direction of enabling the federal government to enforce effective regulations in case of great emergencies. But it contains a number of provisions which have led and will continue to lead to conflicts in authority. Examples bearing out this statement will be found in Wyman's work on *Quarantine and*

¹ 27 Statutes at Large, 450.

Commerce (page 14). In matters of this sort, where one of the prime requisites to efficiency is promptitude of action, it is a serious mistake to make the federal government wait until there has been a failure by state or municipal authorities. There will always be more or less hesitancy upon the part of the federal government to provoke a conflict of authority by deciding that the state has failed. A more practicable plan is to entrust the work from the beginning to the service least likely to fail, and, if thought advisable, to empower it to invite the coöperation of the local authorities.

One of the most practical provisions of the law of 1893 is that furnishing an inducement to the states to give up their claims of jurisdiction in quarantine matters by providing that, whenever they turn over to the federal government the buildings, apparatus *etc.* used by them for quarantine purposes, the federal government will pay a reasonable price for the same. So far this provision has resulted in the transfer to the United States of their quarantine stations by the following states: Florida, North Carolina, New Jersey, Georgia and Oregon. The latter state abolished by joint resolution the state quarantine service and asked the federal government to take charge of the entire quarantine service of the state on May 20, 1905; and, upon acceptance of this offer by the Secretary of the Treasury, it repealed all of its laws relating to quarantine. Like action by other states would greatly simplify the problem of protecting the public health; for, so long as the states refuse to surrender their supposed rights, the federal government will be in the future, as it has been in the past, very loath to assume full control.

It is very gratifying to note the action of the conference of governors and other representatives of southern states held in Chattanooga, Tennessee, November 9 and 10, 1905. This body adopted the following preamble and resolutions:

Whereas the experience of recent years and especially the experience of this year have demonstrated beyond cavil that the house mosquito, known as the *stegomyia fasciata*, is the sole known cause of yellow-fever epidemics and have demonstrated the futility and nuisance of many antiquated methods of quarantine hitherto resorted to and the wisdom

and necessity, in the interest of the public health and the public business, of uniform regulations to prevent the importation into the United States of yellow fever and its spread from State to State in the unfortunate event of its introduction : Now, therefore,

Be it resolved : That we, delegates from Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, Maryland, North Carolina, South Carolina, Tennessee, Virginia and West Virginia, hereby respectfully request the Senate and House of Representatives in Congress assembled to enact a law whereby coast, maritime and national frontier quarantine shall be placed exclusively under the control and jurisdiction of the United States Government, and that matters of interstate quarantine shall be placed under the control and jurisdiction of the United States Government, acting in coöperation with the several State boards of health.

We furthermore respectfully request that Congress shall make adequate appropriation to enforce and perfect the objects of this memorial and to stamp out as nearly as practicable the yellow-fever-carrying mosquito in its breeding or living places in the United States and by negotiating arrangements with the Governments of Central and South America and the West India Islands, in places where the said mosquito has its breeding places or exists in said countries.

Resolved, second : That we urge upon the legislatures of the several Southern States that they enact quarantine regulations as nearly as possible in accord and conformity as hereafter enacted.

We furthermore urge the governors of the said several States with the above object in view specifically to call the attention of the legislatures of their respective States to the wisdom and policy of this course.

These resolutions are especially significant because they indicate that the prejudice of more than a century in favor of the doctrine of state-rights is not strong enough to prevent the southern statesmen of today from perceiving that matters which can best be handled by the general government should be entrusted to that government, unless the transfer of authority would be in violation of the constitution, in which case the constitution should be amended, provided the matter is of sufficient importance to warrant the trouble which such a proceeding involves. But in the case before us, there is no need of any amendment. There is ample authority vested in the federal government by the constitution to warrant its assuming control over maritime

and interstate quarantine, provided such an assumption be deemed expedient. And, as there is scarcely an argument in favor of any form of federal control of interstate commerce which does not hold good as regards this form, it would seem abundantly clear that federal control of quarantine is expedient.

Upon the question of the assumption of control by the federal government, President Roosevelt made the following recommendation in his annual message of December 6, 1905 :

It is desirable to enact a proper national quarantine law. It is most undesirable that a State should on its own initiative enforce quarantine regulations which are in effect a restriction upon interstate and international commerce. The question should properly be assumed by the Government alone. The Surgeon-General of the National Public Health and Marine Service has repeatedly and convincingly set forth the need for such legislation.

For some reason, this advice does not seem to have convinced Congress that the matter was sufficiently urgent to demand its attention. Past epidemics seem to have been forgotten, and there has been little or no indication that new epidemics were impending. Yet no one can review the work of the laboratories established by the federal government for the study of such epidemics as yellow fever, bubonic plague, *etc.*, without being convinced that there is much to be gained from such lines of investigation; nor is it likely that any one state would consider itself under obligation to bear the expense of supporting laboratories for conducting investigations in the fruits of which all other states would share.

The history of immigration emphasizes the importance of providing against epidemics. During the fiscal year 1904, 1560 persons were excluded because of contagious diseases, and in the following year 2198 were excluded for the same reason. During the latter year, 5788 vessels were inspected, and of these 207 were disinfected, at the forty national quarantine stations along the Atlantic, Gulf and Pacific coasts.

I have reviewed the legislation upon this subject in somewhat copious detail because the subject is in itself interesting, and also because the tendency toward conservatism in this field fur-

nishes evidence that existing apprehensions concerning the centralization of power in the federal government have little basis. The fact is that the federal government has been slow in developing its powers. The only exceptions to this rule fall in three distinct periods: at the very beginning, when the influence of Hamilton was at its height; during and immediately after the Civil War; and during the present decade. In the first of these periods this development was necessary in order to avoid the rocks upon which the confederation split; in the second it was inevitable because the power of the federal government to maintain its own existence was the main issue upon which the war was fought; in the third, the issue was forced upon the federal government by reason of the necessity for controlling corporate power—a work for the performance of which the states had demonstrated their incapacity. But even during these periods there has been evident something of the tendency which we have noted in federal quarantine legislation—a tendency on the part of the central government to refrain from assuming the full extent of its constitutional authority until the exercise of such authority is forced upon it by the necessities of the case.

If this conclusion be correct, those who consider the protection of the public health a matter of the first importance can render a valuable service by doing their share toward developing an energetic public sentiment in favor of the expansion of the powers of the national government in this field. Congress must be forced to realize that the question is considered important, and that the people are convinced of the expediency of the exercise, by the federal government, of the quarantine powers which under the constitution it has a right to exercise. A "Committee of One Hundred" has been organized by the American Association for the Advancement of Science, for the purpose of considering questions relating to health and of advocating increased federal regulation of the public health; and it is to be hoped that the movement in this direction will receive from their hands an impulse which will bring results.

EDWIN MAXEY.